



JUL 17 2012

**REGISTERED MAIL**

Glooscap Heritage Society  
65 Treaty Trail,  
Truro NS B2N 5A9

BN: 863402293RR0001

Attention: Mrs. Joyce Mingo

File #: 3029824

**Subject:     Notice of Intention to Revoke  
                  Glooscap Heritage Society**

Dear Mrs. Mingo:

I am writing further to our letter dated October 26, 2011 (copy enclosed), in which you were invited to submit representations as to why the registration of Glooscap Heritage Society (the Organization) should not be revoked in accordance with subsection 168(1) of the *Income Tax Act*.

We have now reviewed and considered your representative's, Mr. Edwin C. Harris Q.C., written response dated November 22, 2011. However, notwithstanding his reply, our concerns with respect to the Organization's non-compliance with the requirements of the Act for registration as a charity have not been alleviated. Our position is fully described in Appendix "A" attached.

**Conclusion:**

Our audit revealed that the Organization had devoted a significant portion of its resources to the promotion of the Global Learning Gifting Initiative tax shelter gifting arrangement. Our audit indicated that, for the period from January 1, 2008 to December 31, 2009, the Organization had received in excess of \$24.8 million of cash and in-kind property. Our audit revealed that of the \$13.4 million in cash received, the Organization paid over \$3.75 million to the promoters of the tax shelter and was directed to pay more than \$8.76 million to another charity participating in this tax shelter. The Organization itself retained \$900,000 for use in its own activities.

Our audit also revealed that the Organization issued tax receipts in excess of \$11.4 million for courseware purportedly donated by the participants of the tax shelter. It is our position that the amounts recorded on the tax receipts for the courseware were grossly inflated, as the Organization failed to ensure the receipts recorded the factual fair market values as required under Regulation 3501(1)(h)(ii) of the Act.

It is our position that the Organization has operated for the non-charitable purpose of promoting a tax shelter arrangement and for the private benefit of the tax shelter promoters. The Organization has become engaged in activities beyond its charitable mandate; issued receipts for transactions that do not qualify as gifts; issued receipts otherwise than in accordance with the *Income Tax Act* and its Regulations; failed to file an accurate T3010 *Registered Charity Information Return*; and, acted in concert with another registered charity to unduly delay its obligation to meet its disbursement quota. For all of these reasons, and for each of these reasons alone, it is the position of the Canada Revenue Agency (CRA) that the Organization's registration should be revoked.

Consequently, for each of the reasons mentioned in our letter dated October 26, 2011, I wish to advise you that, pursuant to subsection 168(1) of the Act, I propose to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, revocation will be effective on the date of publication of the following notice in the *Canada Gazette*:

*Notice is hereby given, pursuant to paragraphs 168(1)(b), 168(1)(c), 168(1)(d) and 168(1)(e) of the Income Tax Act, that I propose to revoke the registration of the organization listed below under subsection 149.1(2) of the Income Tax Act and that the revocation of registration is effective on the date of publication of this notice.*

**Business Number**  
863402293RR0001

**Name**  
Glooscap Heritage Society  
Truro NS

Should you wish to object to this notice of intention to revoke the Organization's registration in accordance with subsection 168(4) of the Act, a written Notice of Objection, which includes the reasons for objection and all relevant facts, must be filed within **90 days** from the day this letter was mailed. The Notice of Objection should be sent to:

Tax and Charities Appeals Directorate  
Appeals Branch  
Canada Revenue Agency  
250 Albert Street  
Ottawa ON K1A 0L5

A copy of the revocation notice, described above, will be published in the *Canada Gazette* after the expiration of 30 days from the date this letter was mailed. The Organization's registration will be revoked on the date of publication, unless the CRA receives an order, **within the next 30 days**, from the Federal Court of Appeal issued under paragraph 168(2)(b) of the Act extending that period.

Please note that the Organization must obtain a stay to suspend the revocation process, notwithstanding the fact that it may have filed a Notice of Objection.

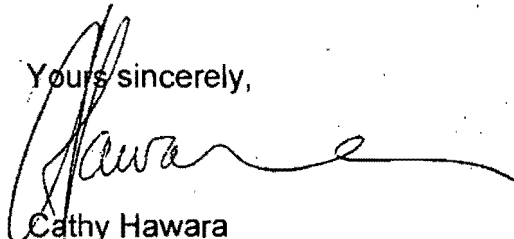
### Consequences of Revocation

As of the effective date of revocation:

- a) the Organization will no longer be exempt from Part I Tax as a registered Organization and **will no longer be permitted to issue official donation receipts**. This means that gifts made to the Organization would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3), or paragraph 110.1(1)(a), of the Act, respectively;
- b) by virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the Notice of Intention to Revoke. This revocation tax is calculated on prescribed form T-2046, *Tax Return Where Registration of a Organization is Revoked* (the Return). The Return must be filed, and the tax paid, on or before the day that is one year from the date of the Notice of Intention to Revoke. A copy of the relevant provisions of the Act concerning revocation of registration, the tax applicable to revoked charities, and appeals against revocation, can be found in Appendix "B", attached. Form T-2046 and the related Guide RC-4424, *Completing the Tax Return Where Registration of a Organization is Revoked*, are available on our website at [www.cra-arc.gc.ca/charities](http://www.cra-arc.gc.ca/charities);
- c) the Organization will no longer qualify as a charity for purposes of subsection 123(1) of the *Excise Tax Act* (ETA). As a result, the Organization may be subject to obligations and entitlements under the ETA that apply to organizations other than charities. If you have any questions about your GST/HST obligations and entitlements, please call GST/HST Rulings at 1-800-959-8287.

Finally, I wish to advise that subsection 150(1) of the Act requires that every corporation (other than a corporation that was a registered Organization throughout the year) file a *Return of Income* with the Minister in the prescribed form, containing prescribed information, for each taxation year. The *Return of Income* must be filed without notice or demand.

Yours sincerely,



Cathy Hawara  
Director General  
Charities Directorate

Attachments:

- CRA letter dated October 26, 2011 (without working papers);
- The Organization's response of November 22, 2011;
- Appendix "A", Comments on Representations of November 22, 2011; and
- Appendix "B" Relevant Provisions of the Act.

c.c.: McInnes Cooper  
Purdy's Wharf Tower II  
901 -1969 Upper Water Street  
P.O. Box 730  
Halifax NS B3J 3V1

Attention: Edwin C. Harris Q.C



CANADA REVENUE  
AGENCY

AGENCE DU REVENU  
DU CANADA

**REGISTERED MAIL**

Glooscap Heritage Society  
65 Treaty Trail,  
Truro, NS B2N 5A9

BN: 863402293RR0001

Attention: Mrs. Joyce Mingo

File #: 3029824

October 26, 2011

**Subject: Audit of Glooscap Heritage Society  
For the fiscal year ended December 31, 2008 and 2009**

Dear Mrs. Mingo:

This letter is further to the audit of the books and records of the Glooscap Heritage Society (the Organization) conducted by the Canada Revenue Agency (the CRA). The audit related to the operations of the registered charity for the period from January 1, 2008 to December 31, 2009.

The CRA has identified specific areas of non-compliance with the provisions of the *Income Tax Act* and/or its *Regulations* in the following areas:

AREAS OF NON-COMPLIANCE:		
	Issue	Act Reference
1.	Failure to devote all resources to charitable activities	149.1(1)
2.	Issuing Tax Receipts not in accordance with the Act	118.1(2), Regulation 3501(1)(h)
3.	Failure to File An Accurate Information Return	149.1(14)
4.	Acting in Concert	149.1(4.1)(a)

The purpose of this letter is to describe the areas of non-compliance identified by the CRA during the course of the audit as they relate to the legislative and common law requirements applicable to registered charities, and to provide the Organization with the opportunity to make additional representations or present additional information. Registered charities must comply with the law, failing which the Organization's registered status may be revoked in the manner described in section 168 of the Act.

The balance of this letter describes the identified areas of non-compliance in further detail.

## **Identified Areas of Non-Compliance:**

### **1A. Failure to devote all resources to charitable activities**

The Organization is registered as a charitable organization. Pursuant to subsection 149.1(1) of the Act, a "charitable organization" is defined as an organization.... "All the resources of which are devoted to charitable activities carried on by the organization itself".

To qualify for registration as a charity under the Act, a charitable organization must be established for charitable purposes that oblige it to devote all its resources to its own charitable activities. This is a two-part test. First, the purposes it pursues must be wholly charitable and second, the activities that it undertakes on a day-to-day basis must support its charitable purposes in a manner consistent with charitable law. Charitable purposes are not defined in the Act and it is therefore necessary to refer, in this respect, to the principles of the common law governing charity. An organization that has one or more non-charitable purposes or devotes resources to activities undertaken in support of non-charitable purposes cannot be registered as a charity.

Once registered, a charity must only pursue activities in furtherance of the specific charitable purposes as approved by CRA. The implicit understanding is that the charity will not undertake any activity beyond those described in the application for charitable registration. This is necessary to ensure that the charity will operate within the limitations imposed by the Act.

### **Operating Ultra Vires**

As above, registered charities are required to pursue activities in furtherance of the purposes for which they are established. There is some concern that the Organization is operating outside of its corporate mandate. As per the Organization's constitution and bylaws, it was founded to pursue the following charitable objectives and activities<sup>1</sup>:

"To research, acquire, conserve, interpret, exhibit, and publicize, for the purpose of study, understanding, education, and enjoyment, the material and oral evidence of the history of Mi'kmaq First Nation in the central area of NS, all on a financially self-sustaining basis."

An explanation of these objectives was provided by the Organization at the time of Registration in 2005<sup>2</sup>. It clarified that it would be running a museum.

Our audit showed that, prior to the 2008 fiscal year, the Organization's activities consist of various activities that were consistent with its charitable objectives, including:

- Obtaining Mi'kmaq historical items;
- Obtaining the rights to display similar items owned by other museums;
- Establishing a museum to display these items;

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<sup>1</sup> These are the objectives outlined in the Organization's Memorandum of Association and filed with the CRA

<sup>2</sup> Organization explanation of objectives filed during the registration process.

- Provide tours; and
- Operating a small gift shop for local native crafts, clothing, books and toys.

It appears that after entering into the Global Learning Gifting Initiative (GLGI) tax shelter gifting arrangement (Donation Program), the Organization allocated the majority of its resources to activities that did not fall within its charitable mandate. The activities being conducted appear to be driven by the need to facilitate the distribution of property being offered by participants in the Donation Program rather than with a view to the Organization's own charitable mandate.

The Organization began its participation in the Donation Program in the 2008 fiscal year. Consequently, the focus of the Organization's activities has shifted towards the promotion and facilitation of the Donation Program.

A detailed overview of the Donation Program is provided in the enclosed Appendix A. The basic premise of the Donation Program is that a participant would make a cash donation to a designated charity and concurrently receive educational courseware purportedly worth three or more times of the initial cash outlay. The participant would then, through means pre-arranged by the Promoter, donate the courseware to either the same designated charity or another designated charity. The tax receipts for the cash and the in-kind gifts of the courseware would enable the participant to generate a positive return on the initial cash payment of 56% to 112% through the combined federal and provincial donation tax credits. The Organization played a critical role in the Donation Program in 2008 by accepting all the cash from the participants, issuing tax-receipts, and then redirecting a large proportion of the funds to another designated charity, Malvern Rouge Valley Youth Services (MRVYS), that accepted the courseware. In 2009, the Organization issued tax receipts for both courseware and cash received from the participants of the Donation Program. As will be explained later, the Organization also facilitated the routing of over 80% of the tax-receipted cash back to the Promoter of the Donation Program.

In its first year of participation (May 2008 – December 2008), the Organization issued total tax receipts of \$11,590,374. Under a new agreement with the Promoters, the Organization issued tax receipts totaling \$13,312,073 in the period from November to December of 2009. Prior to its involvement in the Donation Program, the Organization issued total tax receipts of \$166,720 and \$0 respectively in the fiscal years of 2006 and 2007.

The Organization has undertaken a series of new activities to accept and distribute these large amounts of cash and educational courseware received through the Donation Program. In 2008, it set up a separate bank account and contracted a company, C2 Communication, to help manage all the incoming cash and outgoing wires. The Organization also undertook a series of measures to distribute the courseware: first, it signed a \$300,000 contract with InfoSource to maintain an internet portal through which the courseware was to be distributed to the end users. Second, the Organization sent employees to Florida to be trained for administering the courseware distribution through the InfoSource Portal. Third, the Organization actively recruited individuals from both within and outside the Organization to become registered users of the courseware. Fourth, the Organization designated one room

in a newly leased facility to be used as a computer centre and assigned employees to administer computer room.

In November 2008 and during 2009, the Organization tried to add a third objective to its mandate: "...to explore, seek opportunities and work in partnership with, other organization that expand the education and learning opportunities for people of aboriginal cultures in Canada...". This amendment was registered with the registry of joint stocks in August 2009 but was not submitted to CRA for approval until November 2010 -- in other words, after the current audit was initiated. It is our position that the Organization undertook this amendment in the belief that it would render the activities associated with the courseware from the Donation Program consistent with its charitable mandate. The Organization was informed that any new objectives have to be submitted to CRA by their own lawyer in October 2008 and by the original registration letter from CRA in July 2005. In May and August of 2008 representatives from CRA were in contact with the Organization voicing their concerns with the participation in the Donation Program, yet the Organization did not contact CRA about the proposed changes to the objectives only 3 months later when they started to amend them.

Our review showed the Organization's total expenses for the 2008 fiscal year were \$11,301,644 and the expenses related to the Donation Program totaled \$10,940,312 (96.8%) (W/P# 400-1 attached). Our review of the 2009 fiscal period showed the total expenses were \$2,137,901 and the expenses relating to the Donation Program for just November and December were \$1,779,824 (83.3%) (W/P# 500-1 attached). As such, we conclude that the activities associated with the Donation Program use the majority of their resources and have become the primary focus of the Organization.

It is our view that the Organization is operating outside of its charitable mandate by pursuing the activities of distributing funds and educational courseware for the Donation Program. Our records indicated that the Organization disbursed \$8,761,795 out of \$11,590,374 of tax-receipted cash from the participants of the Donation Program to MRVYS. However, the Organization's charitable mandate as registered with CRA did not include the disbursement of funds to other qualified donees. Further, there was no indication that the Organization had any relationship with MRVYS prior to its participation in the Donation Program, nor that MRVYS and the Organization shared any common charitable objectives. Therefore, it is our position that the significant cash disbursement by the Organization to MRVYS was inconsistent with the charitable mandate of the Organization. Our review of the courseware shows that it is a collection of computer tutorials on commonly-used office software applications, work-place communication and managerial skills. The courseware titles suggest that they are selected specifically for the career development or job training purposes of individuals who are currently employed or entering the workforce. As such, we fail to see how the courseware is related to the Organization's registered charitable purposes of acquiring, conserving, and exhibiting evidence of the history of Mi'kmaq First Nation. Even if the amended objectives proposed in November of 2008 were registered with CRA, they indicated that the target beneficiaries of the Organization's 3<sup>rd</sup> objective would be people of aboriginal cultures. However, our review of the courseware user's registration records indicates that the availability is open-ended rather than being restricted to the target beneficiaries as stated in the proposed amended objectives. There is no indication from the users' registration forms that the Organization intends to evaluate, or has evaluated, the

needs for the courseware of the users and how satisfying these needs would further its charitable purposes. As of 2009, the Organization issued \$11.5 million in tax receipts for courseware and indicated that it plans to issue a further \$11.5 million or more of receipts in 2010. However, our records indicated that only 21 of the 305 registered users had actually accessed any courseware on the Portal. Furthermore, these individuals consist of mostly employees of the Organization or of Central Tourism Nova Scotia Association, which has the same executive director as the Organization. For all of the above reasons, it is our position that neither the disbursement of cash nor the distribution of courseware received from the Donation Program advances the Organization's objectives or proposed objectives.

By all accounts, the delivery of the courseware did not enhance the charitable purposes of the Organization. Although we acknowledge that the Organization undertook activities that were consistent with its charitable purposes, we note that the Organization had devoted the majority of its resources to courseware related activities. Therefore, it is our conclusion that the Organization has operated beyond its charitable mandate during the period under audit.

#### Collateral Non-Charitable Activities

Given our view that the delivery of the educational courseware is inconsistent with its charitable purposes, it is our view that the Organization is promoting and facilitating the Donation Program primarily, if not exclusively, to confer tax benefits on the participants. Operating for the purposes of conferring tax benefits is not a charitable purpose at law. It is therefore our conclusion that the Organization had operated for a collateral non-charitable purpose by participating in the Donation Program.

As previously summarized, the Organization has committed the majority of its resources to facilitate the Donation Program and the subsequent delivery of the educational courseware. Aside from the financial impact, this new set of activities also represented a drastic change to the operation of the Organization. Therefore, we found it disconcerting that the Organization apparently made no attempt to consider the potential impact on its original charitable programs prior to undertaking these activities. Of the Organization's board meeting minutes reviewed, we identified no discussion, prior to participating in the Donation Program, on whether these activities were consistent with the current charitable objectives or whether the Organization was pursuing an expanded set of charitable objectives. There was no mention of the Donation Program in the minutes of 2008. In 2009, the minutes showed that the Organization was devising means to continue its participation in the donation program despite being aware of the compliance issues. As previously mentioned, the Organization was contacted by CRA twice in 2008 regarding the compliance issues and the potential consequences of participating in the Donation Program. Subsequently, the Organization stated in the 2008 financial statement that it would terminate the agreement with the Promoters but then proceeded to amend its objectives without CRA's consent such that it could expand its involvement in the Donation Program. In 2009, the Organization entered an agreement, by which it would issue tax receipts for both cash and courseware from the Donation Program, in November of 2009. The tax donation receipts of \$13,312,073 were written for the December 31, 2009 year end.

The Organization has displayed a lack of due diligence in failing to consider the charitable nature of the activities related to the Donation Program and the subsequent delivery of the educational courseware. It is our position that the Organization was not seeking to further its current charitable objectives or pursuing any charitable purpose through its participation in the Donation Program. Rather, the Organization lent its tax-receipting privileges and tax-exempt status to accommodate the Donation Program in order to confer tax benefits on the participants. Therefore, we conclude the Organization failed to devote all its resources to its charitable activities as required by subsection 149.1(1) of the Act.

#### Operating as a Conduit

From the Organization's participation in the Donation Program, it is our view the Organization is primarily operating as a conduit for an identified tax shelter and is furthering the for-profit motives of the tax shelter and its Promoters. As per above, the Organization was not established or operated for the delivery of educational courseware and did not try to become so until its participation in the Donation Program. It is our opinion that the collateral purpose, if not primary purpose of the Organization was, in fact, to support and promote the tax shelter arrangement. Operating for the purpose of promoting a tax shelter arrangement is not charitable at law.

Per our review of the documentation provided, and per our interview with the Organization's Executive Director, Joyce Mingo, and Office Manager, Sharon Touchie, the Organization has demonstrated that it merely relied upon the information provided by the Promoter without question and did not seek its own independent opinion or verification of the program presented to the Organization before signing the first agreement. Legal opinion was only sought after CRA expressed concerns to the Organization<sup>3</sup>. However, the Organization entered into a second agreement for the Donation Program before the legal opinion was made available to its board and continued to participate despite receiving an unfavourable legal opinion<sup>4</sup> from its own counsel. The Organization accepted the promoter's valuations for the courseware and did not try to get an independent appraisal until after they had already written donation receipts for almost \$11.5 million in courseware. The Organization received a proposal for a valuation, but no actual independent valuation report or payment for a report was provided.

The actions and information provided by the Organization in the Donation Program lead us to believe that the Organization is merely operating as a conduit for a tax shelter and has agreed to participate in exchange for financial compensation. In the Donation Program, the Organization agrees to accept the donations of cash and courseware from participants and agrees to purportedly utilize 100% of the courseware as part of its own programs while paying the Promoter a set fee.

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<sup>3</sup> [REDACTED] sent emails to the charity in May and June 2008 and [REDACTED] sent emails in July 2008 and visited Joyce Mingo in August 2008.

<sup>4</sup> The emailed legal opinion later mailed on Nov.23/09 said the courseware would vastly exceed the monetary contributions. CRA is reviewing all tax shelter related arrangements. If they use [REDACTED] it might be viewed as a serious of artificial transactions. Potential risk would include monetary sanctions and possible suspension or revocation of Glooscap's charitable status.

Our audit showed that the coursewares were made available to the Organization through an internet portal in packages, with each package containing 171 different licenses. The Organization informed us that it has access to 10,000 packages and provided the printout from the portal to support this figure. The Organization later put the total number of packages at 1,102 with a value of \$7,392.75 each. The total number of licenses receipted divided by 171 courses per package equalled 1,582. However, we note that none of the three figures could be reconciled to the total tax-receipted value of \$11,469,615.70 for courseware, as reported on the 2009 T3010 return. The Organization's confusion regarding the actual amount of courseware it had, demonstrated its lack of direction over the Donation Program and reinforces our position that it was merely acting as a conduit.

The Organization does not appear to have conducted an independent review of the donation program to determine whether the program was compliant with the Act prior to its participation. The Organization, despite being asked to accept and distribute over \$11.5 million in cash in 2008, did not seek to independently verify the programs being entered into. One cannot rely upon a legal opinion provided to another party, as the underlying facts relied upon are unique to each party and therefore may not be specifically attributable to all parties relying upon the opinion. More importantly, the Organization entered into the Donation Program again in 2009 and issued tax-receipts of \$13.3 million in cash and in-kind property despite ample warnings from both CRA and its own legal counsel. The Organization's failure to demonstrate its own due diligence points to a pattern of active willingness to participate in a scheme designed to produce inappropriate tax benefits.

Based on the Organization's income, the Organization is financially dependent on the Donation Program. For the years audited, the Organization has accepted cash of \$11,590,374 and \$1,842,457 from participants and has retained \$684,121 (5.9%) and \$214,495 (11.6%) of cash for its own programs in 2008 and 2009 (W/P# 755 & 765 attached). Without these funds the Organization operating deficit would have been (\$145,077) and (\$202,782) according to their own financial statements.

It is our position that by pursuing this non-charitable purpose, the Organization has failed to demonstrate it meets the test for continued registration under 149.1(1) as a charitable organization that "operated exclusively for charitable purposes". For this reason, it appears there may be grounds for revocation of Glooscap Heritage Society's registered charity status under subsection 168(2) of the Act.

### **1B. Gifts to Non Qualified Donees**

As previously mentioned, a registered charity must be constituted exclusively for charitable purposes, and devote its resources to charitable activities in furtherance thereof. The provision of the Act allows a registered charity to properly use its resources (funds, personnel and/or property) in two ways, both inside and outside Canada – for charitable activities undertaken by the charity itself, under its continued supervision, direction and control, and for gifting to "qualified donees" as defined in the Act. A charity is not permitted to carry out its purposes by simply handing over its money or other resources to an individual or to another organization that is not a "qualified donee". Where a charity transferred resources

to a non-qualified donee, it must demonstrate that the resources were used exclusively to further the charity's approved objectives and the charity maintains full control of the resources over such resources. Gifting to a non-qualified donee will put the registered status of the charity in jeopardy and is can be sanctioned under paragraph 188.1(4)(a).

Our audit revealed that the Organization transferred \$25,000 in 2008 to Jiksutui (c/o [REDACTED]), which was not a qualified donee. Our audit did not indicate that there was any arrangement with Jiksutui to ensure that the Organization retains full direction and control over the funds transferred. Jiksutui Social Cultural Economics Skills Development Co-operative Ltd. did not become a charity until June 15, 2009 thus the payment in 2008 was considered a gift to a non qualified donee.

It is our position by pursuing this non-charitable purpose, the Organization has failed to demonstrate it meets the test for continued registration under 149.1(1) as a charitable organization that "operated exclusively for charitable purposes". For this reason, it appears there may be grounds for revocation of Glooscap Heritage Society's registered charity status under subsection 168(2) of the Act.

## **2. Issuing Tax Receipts Not In Accordance with the Act**

It is our position that the Organization has contravened the *Income Tax Act* by accepting and issuing receipts for transactions that do not qualify as gifts. The Organization has issued tax receipts exceeding \$11.5 million in cash in 2008 and \$13.3 million in cash and courseware in 2009 received as per its participation in the Donation Program. We have determined that the properties for which the tax receipts were issued were not gifts at law and the receipted values were grossly inflated.

Pursuant to subsection 118.1(2) of the Act, a registered charity can issue tax receipts for income tax purposes for donations that legally qualify as gifts. The Act requires the registered charity to ensure the information on its official donation receipts is accurate. The requirements for the content of the receipts are listed in Regulation 3501 of the Act. A registered charity could have its registered status revoked under paragraph 168(1)(d) of the Act for issuing tax receipts that contain false information.

It is of particular importance that the registered charity reports the correct value of the gift on the tax receipts. Given the potential uncertainty over their valuation, the Act stipulates that the "fair-market value" (FMV) of a gift of non-cash property to be reported on the tax receipts. The CRA recognizes the complexity of valuating non-cash property and recommends the use of an independent appraiser where a registered charity issues a tax receipt of significant value for gift-in-kind. We recognize that appraisals are not required under the Act or its Regulations; however, it is our view that the onus remains with the charity to ensure the value assigned to non-cash gifts received is reflective of the factual fair market value of the goods being received. For property with a value in excess of \$1,000, we strongly recommend that the property be appraised by an independent third party<sup>5</sup>. The person

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<sup>5</sup> An independent party is one who is not affiliated with the charity or the originator of the property.

determining the fair market value of the item should be competent and qualified to evaluate the particular property being donated, as well as be knowledgeable about the marketplace for the specific property. They should be knowledgeable about the principles, theories, and procedures of the applicable valuation discipline and follow the *Uniform Standards of Professional Appraisal Practice* or the standards of the profession.

Additionally, we would like to inform you that certain amendments to the Act were introduced as part of Bill C-33 tabled in Parliament on March 23, 2004, that came into force May 13, 2005. As part of the amendments, a registered charity that issues an official donation receipt that includes incorrect information is liable to a penalty equal to 5% of the eligible amount stated on the receipt. This penalty increases to 10% for a repeat infraction within 5 years.

A registered charity that issues an official donation receipt that includes false information is liable to a penalty equal to 125% of the eligible amount stated on the receipt, where the total does not exceed \$25,000. Where the total exceeds \$25,000, the charity is liable to a penalty equal to 125% and the suspension of tax-receipting privileges. We do not intend to apply this penalty given the serious nature of other matters of non-compliance. We are therefore pursuing other ends as explained below.

#### Lack of Donative Intent

It is our position that the courseware received by the Organization under the Donation Program did not constitute a gift at law. A gift must be a gift at law in order for it to be a valid charitable gift under section 118.1 of the Act.

Justice Bowie stated in *Dwight Webb (Appellant) v. Her Majesty the Queen (Respondent)*, 2004 UDT 148:

*"... in order for an amount to be a gift to charity, the amount must be paid without benefit or consideration flowing back to the donor, either directly or indirectly, or in anticipation of that. The intent of the donor must, in other words, be entirely donative."*  
[Emphasis added]

In the case of *Her Majesty The Queen (Plaintiff) v. Dr. F. Bruce Burns (Defendant)*, 88 DTC 6101, Justice Pinard of the Federal Court, Trial Division, discussed the concept of "*animus donandi*":

*"I would like to emphasize that one essential element of a gift is an intentional element that the Roman law identified as *animus donandi* or liberal intent... The donor must be aware that he will not receive any compensation other than pure moral benefit; he must be willing to grow poorer for the benefit of the donee without receiving any such compensation."*

It is our finding, based on the transactions outlined in Appendix A, that the primary motivation of the participants in the Donation Program was not to enrich the charities and

assist in their fundraising, but rather, through a series of transactions, to make a profit from the tax credits so obtained.

In this case, the participant made a cash payment with the expectation that he would receive aggregate charitable donation receipts that would allow him to claim income tax credits greater than the cash payment. The cash payment was made with the expectation that:

- The participant would receive a charitable donation receipt for the value of the cash payment;
- The participant would receive "educational courseware" at no cost; and
- The participant would transfer the "educational courseware" to the Organization and receive a second charitable donation receipt for at least three times the value of the cash payment.

The series of transactions was pre-arranged with the result that the participant would claim a donation that was three to seven times the cost of participating in this gifting arrangement. It is our opinion that the participant participated in this gifting arrangement with full knowledge of this material benefit.

The promoter's website emphasized the tax advantages of the Donation Program. A simulator on the website demonstrated how a participant from Ontario could generate a tax refund of \$31,415 by making a cash "donation" of \$12,000. The simulator calculated a "rate of return" on the initial cash outlays. Participants may determine their "cash advantage" by inputting the actual cash donation they chose to make, which the simulator would convert at a 1 to 5 ratio into the "Gift In Kind Donation". We observed that cash advantages and rate of returns for various provinces were similarly highlighted in the promotional materials of other years' versions of the Donation Program. Such promotional materials provided precise instructions on completing a package of documents and make cash payments to the charities involved. Minimal involvement was required of the participants. Transactions were pre-arranged and directed entirely by the Promoter and the Consultant. Glooscap Heritage Society was aware of this arrangement with the participants, as it had promotional material in its possession that outlined this calculation.

These points, in our opinion, are evidence the transactions are primarily motivated by the participant's intent to enrich himself rather than an intent to make a gift to charity. In our opinion, were we to accept these transactions occurred as represented, it would be our view that the participants were not making gifts but intending to profit from a combination of the tax credits and other benefits given to them. As such, it is our position there is no intention to make a "gift" within the meaning assigned at 118.1 of the Act and these transactions did not qualify for tax receipting purposes. For this reason, it appears to us that there may be grounds for revocation of the charitable status of Glooscap Heritage Society under paragraph 168(1)(d) of the Act.

### Benefit Received

We are also of the opinion that the participants received consideration for their "cash donation" in the form of a benefit or an advantage that was linked to and flowed from certain pre-arranged conditions. As we have previously outlined, a participant contributes a fee, guised as a donation, to Glooscap under the Donation Program and suddenly becomes eligible for a distribution of courseware from the Trust. The cash amount contributed predetermines whether the participant will become a "beneficiary" of the Trust and, perhaps more importantly, the value of the courseware the participant is eligible to receive. This is clear both from the promotional materials and the audit evidence with respect to the pattern of transactions of the participants.

The participant received the benefit of becoming a beneficiary of the Trust and having "educational courseware" distributed to himself without cost. The participant's entitlement to receiving the "educational courseware" from the Trust was linked to the amount of cash payment. At the time of cash payment, the participant applied to become a beneficiary of the Trust to request a specific value of courseware to be distributed from the Trust equalling three or more times the cash payment. Afterwards, the participant signed a Deed of Gift agreeing to donate the "educational courseware" to a designated charity (the Organization). It is our position that the "educational courseware" was to be distributed in consideration for:

- 1) the cash payment, and
- 2) the agreement to donate the property to the Organization

It is our view the representations with respect to the Donation Program are simply not credible. The CRA is asked to believe that despite the courseware being worth hundreds of millions of dollars, the Trust has settlers that have charitably agreed to distribute the courseware to the capital beneficiaries without compensation or with minimal compensation. The CRA is then told individuals "choose" to donate to the Organization and there is no link between their eligibility to receive property and their cash contributions – this is despite the fact that participants have little to no knowledge or connection to the Organization, the Organization has little history of operating as courseware provider, and there is a clear (and pre-advertised) correlation between how much participants give and how much they receive. The Organization claimed they independently mailed out pleas for donations to everyone who had previously gave under the Donation Program in 2008 and not one donation was received. After the new agreement with GLGI was signed on Nov. 12, 2009 \$13.3 million in donations of cash and gifts in kind was recorded as being received by December 31, 2009.

For the reasons expressed above, it is our position that these transactions do not qualify as gifts. The participants are fully aware that they will receive, and do receive, a benefit from making a cash contribution to a participating charity (i.e., the distribution of courseware from the trust) and that the cash contribution is in reality a participation fees. Consequently, neither the transfer of "educational courseware", nor the cash payment is a valid gift per section 118.1 of the Act.

### Fair Market Value

It is also our position that values reported on the tax receipts for the in-kind gift of courseware did not represent their factual fair market value. Under Regulation 3501(1)(h)(ii) of the Act, a registered charity must report the FMV of the property received on the tax receipts issued for gifts of property other than cash. The Organization issued tax receipts totalling \$11.5 million in the 2009 fiscal year for the donation of courseware received through the Donation Program.

Fair market value is not defined in the Act, therefore, we refer to the well-accepted definition of fair market value found in the decision of *Cattanach J. in Henderson Estate & Bank of New York v M.N.R.* 73 D.T.C. 5471 at 5476:

*"...the highest price an asset might reasonably be expected to bring if sold by the owner in the normal method applicable to the set in question in the ordinary course of business in a market not exposed to any undue stresses and composed of willing buyers and sellers dealing at arm's length and under no compulsion to buy or sell. I would add that the foregoing understanding as I have expressed in a general way includes what I conceive to be the essential element, which is an open and unrestricted market in which the price is hammered out between willing and informed buyers and sellers or the anvil of supply and demand. These definitions are equally applicable to "fair market value"..."*

As outlined by Rothstein, J.A. in *AG (Canada) v Tolley et al* 2005 FCA 386, in applying the Henderson definition of FMV, the first step is to accurately define the asset whose FMV is to be ascertained. Rothstein, J.A. discusses the relevance of donating a group of items versus an individual item and states that because the items were only acquired and donated in groups, the relevant asset was the group of items, and not the individual items in the group. Rothstein, J.A. continues by stating it is wrong to assume that the FMV of a group of items is necessarily the aggregate of the price that could be obtained for the individual items in the group.

It is our position the conclusion made by Rothstein, J.A. also applies to the donation of the licenses to use the educational courseware. As previously mentioned, the Organization had informed us during the audit that it was given 10,000 packages of courseware with each package containing 171 individual licenses. This was confirmed by both our viewing of the portal and the documentation provided by the Organization. Although the Organization later attempted to reduce the total number of packages to 1102, we have seen no conclusive record to refute the initial figure of 10,000. Based on the quantities received by the participants and later donated to the Organization, the relevant asset is considered to be the entire group of licenses or courseware donated and not the individual license or courseware within the group.

The second step in applying the Henderson definition is to identify the market in which the merchandise was traded. Rothstein, J. A. identifies this group of items might not be sold in the same market as individual items, and highlights this distinction through a comparison of the wholesale versus retail markets. We note that the market for the courseware licenses at

issue is limited to no more than three organizations and that there is no other comparable program or market. We are of the opinion the retail market is not the relevant market as the goods were acquired, sold and donated in blocks of goods and that the factual fair market value of the courseware licenses is the last known arm's length price paid for the goods.

The tax receipts for the courseware identified ReW Growth Partners as the appraiser for the Donation Program and listed the gifted property as "Computer Learning Program Licenses." However no valuation report from ReW or payment to ReW for an evaluation report was provided. The Organization could only provide an engagement letter with ReW which was dated April 12, 2010 which is after the December 31, 2009 donation receipts were written. A May 2008 Appraisals and an April 5, 2009 update from emc Partners prepared for Global Learning Trust were the only support provided for the value of the gift in kind of licences / courseware. This valuation report was commissioned by and prepared for the Promoter. Based on the CRA's review, the emc Partners valued the licenses at their individual sale prices in the retail market. However, as explained above, the FMV of the licenses should have been based on the wholesale price of the entire group of licenses transferred to the Organization.

Under paragraph 168(1)(d), the Minister may, by registered mail, give notice to the registered charity that the Minister proposes to revoke its registration if it issues a receipt otherwise than in accordance with the Act and its Regulations. Issuing a donation receipt where there is no gift, no donative intent or the information on the receipt is false, is not in accordance with the Act. It is our position that the Organization has issued receipts otherwise than in accordance with the Act and the Regulations. For each reason identified above, there may be grounds for revocation of the Organization's charitable status.

### Due Diligence

We note with concern that the Organization had demonstrated a lack of due diligence with respect to its tax-receipting practices. As previously explained, the CRA recommends the use of independent appraisers to determine the FMV of gifts of property to be reported on the tax receipts. The Organization's willingness to issue almost \$11.5 million in tax receipts for the educational courseware based solely on the valuation reports provided by the Promoter demonstrated that it had no regard for its receipting privileges granted by the Act. We believe that the Organization's lack of due diligence on this matter reinforced our earlier assertion that its primary focus had become the facilitation of the Donation Program. The Organization's attempt at obtaining an appraisal after the fact does not show due diligence especially considering they never carried through with obtaining the appraisals.

### Proposed Legislation

On December 5, 2003, the Department of Finance introduced new legislation with respect to charitable donations and advantages. These rules allow a taxpayer to make a gift to a charity and receive some advantage in return, however the value on the receipt must reflect the eligible amount of the gift made (i.e., the value of the receipt must reflect the gift less any advantage received by the donor). This legislation is applicable in respect of gifts made after December 5, 2003.

It is our view that the participant received an advantage, as defined at proposed subsection 248(32), as a result of the cash contribution to Glooscap, in the form of receiving courseware licenses from their participation in the Donation Program. As such, the fair market value of the subsequent gift of that property to the Organization is deemed, by virtue of proposed subsection 248(35), to be no more than the amount of the initial cash contribution. Consequently the amount that the Organization was required under the *Income Tax Act* to record on its official donation receipts as the deemed fair market value of the gift is significantly lower than what was actually recorded by the Organization.

Under paragraphs 168(1)(d), the Minister may, by registered mail, give notice to the registered charity that the Minister proposes to revoke its registration if it issues a receipt otherwise than in accordance with the Act and the Regulations. It is our position that Glooscap Heritage Society has issued receipts otherwise than in accordance with the Act and the Regulations. For each reason identified above, there may be grounds for revocation of its charitable status.

### Cash Payments and Gifts in Kind

In our view, based on the above, we do not recognize the cash contributions or the value of the courseware received as gifts made to the Organization. Further, the cash contributions represent the charge levied by the Promoter to participants to participate in the Donation Program. Although the cash contribution was represented as being "gifted" to the Organization, it is clear this amount, at no point, was fully available to be used by the Organization for its programs. Rather, the Organization was obliged to funnel the majority of the cash to the promoter either through direct payments or under the guise of gifts to another charity (Malvern Rouge Youth Valley Services) participating in the Donation Program<sup>6</sup>. To this end, we observed that when the Organization temporarily ceased the cash transfer to the promoter and the other participating charity in November 2008, the cash inflow from the participants stopped. As soon as the Organization agreed to continue the cash transfers until the end of 2008, under the advice of its legal representatives, the cash inflow commenced again. No further deposits were made to Glooscap until they signed a new agreement in November 2009, whereby they would take both the cash and the courseware and they would give the promoter back 89.5% of the cash received.

To be considered to be a gift to a charity, it must truly be a donation in support of the Organization's programs. The donee should have the discretion as to how to use the funds or at a minimum to apply these to its charitable purposes. Transactions which are, in reality, disguised payments earmarked for non-charitable purposes are not gifts. We are of the view the Organization received cash gifts which were, in reality, payments from individuals to participate in the Donation Program. Substantially all of the payments were not used for charitable purposes but were retained by the promoter and other third parties.

Of the approximately \$1.8 million in cash received from the participants in 2009, the Organization reports incurring fundraising fees in excess of \$1.6 million to the Promoter in just over one month. More fundraising expenses were incurred in 2009 but they were for internal

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<sup>6</sup> Refer to Appendix A for details.

expenses relating to this Donation Program. In 2008 the organization received over \$11.5 million and paid out over \$10.9 million in eight months.

### 3. Failing to File an Accurate Information Return

Pursuant to subsection 149.1(14) of the Act, every registered charity must, within six months from the end of the charity's fiscal period (taxation year), without notice or demand, file an information return with the applicable schedules.

It is the responsibility of the Organization to ensure that the information that is provided in its information return, schedules and financial statements, is factual and complete in every respect. A charity is not meeting its requirement to file an information if it fails to exercise due care with respect to ensuring the accuracy thereof.

The Organization improperly completed the T3010 for the 2008 and 2009 fiscal periods in that items reported were omitted or inaccurate. Specifically, our audit of the 2009 fiscal period indicated the Organization had received \$13,312,072 cash and Gifts in Kind from the Donation Program and only reported \$11,469,616 as donations, an understatement of \$1,842,457. Further, the Organization paid out \$1,749,536 for fundraising to GLGI but only reported \$30,263 as fundraising expenses incurred for smaller in-house events. Furthermore, lines 5900 and 5910, which are used to calculate the disbursement quota (required spending), were not completed in either year. All registered charities are required to complete these lines for the fiscal periods that begin after 2008. You may refer to our guide, T4033A, for amounts to be included on these lines. Based on our calculations, the amounts that should have been reported on lines 5900 and 5910 on the 2009 return were respectively \$227,741 and \$943,644 (W/P# 540B and 400-1 and 500-1). Other allocation and netting errors were noted as were explained during the audit and on the revised T3010 Return (W/P# 500-1) attached.

The filed and revised disbursement quota for 2009, and the revised accumulated 5 year value showed the Organization was not meeting its required charitable spending. The revised combined disbursement quota shortfall was \$8,509,219 (W/P# 800).

The audit indicated that the Charity did not prepare and issue proper Statements of Remuneration (T4s) to individuals who received bonuses. Regulation 200(2) of the Act requires that where an amount described in subsection 153(1) (wage, salary or other remuneration) has been paid, an information return in prescribed form (T4 or T4A) shall be made.

Under subsection 149.1(14) of the Act, the Organization is required to file its T3010 returns by June 30 of each year. Our records indicated that the Organization's 2008 and 2009 were filed on October 26, 2009 and September 20, 2010, respectively.

Under paragraph 168(1)(c) of the Act, the Minister may, by registered mail, may give notice to the charity that the Minister proposes to revoke its registration because the charity

fails to file a Registered Charity Information Return as and when required under the Act or a Regulation. For this reason, it appears to us that there may be grounds for revocation of the charitable status of Glooscap Heritage Society.

#### **4. Acting in Concert**

Every charity is required by the Act<sup>7</sup> to meet a minimum expenditure requirement, the disbursement quota, on its own charitable activities or gifts to qualified donees in any given taxation year. We acknowledge that the 2010 amendments to the Act will significantly impact a charity's 2011 and future disbursement quota obligation. However, we note that the proposed amendments will only apply to fiscal periods commencing after March 4, 2010. As such, the existing provisions on disbursement quota requirements would still apply for the period under audit.

In considering the application of expenditures used to meet the disbursement quota a charity must ensure that it is expensed directly on charitable activities and/or programs. This would include such payments as salaries to persons performing duties directly related to a charitable program, but would not include amounts paid for purely administrative expenses such as fundraising costs, legal or accounting fees, bank service charges, and the like.

Under paragraph 149.1(2)(b) of the Act, gifts made to another registered charity can be used to satisfy a charity's disbursement quota. Therefore, it is possible for two or more charities to circumvent their disbursement quota obligations with pre-arranged transfer of funds and property amongst themselves. Such practices are prohibited by subsection 149.1(4.1) of the Act, which permits for the revocation of registered charities who act in concert with each other to unduly delay expenditures on charitable activities.

As outlined in Appendix A, over 80% of the cash that was contributed by the participants and tax-receipted by the Organization in the 2008 fiscal year ended up in the hands of the Promoter. The Organization paid 18.39% of the cash received from the participants to the Promoter as fundraising fees, transferred 75.62% to Malvern Rouge Youth Valley Services (MRYVS) and retained 5.99% for its own use (W/P# 755-1). The contract between MRYVS and the Promoter ensured that over 85% of the cash MRYVS received from the Organization would be paid to the Promoter as fundraising fees. Therefore, the Organization, by making cash "gifts" to another qualified donee, MRYVS, was able to route the majority of the tax-receipted cash to the Promoter while ostensibly meeting its disbursement quota.

As explained earlier, the cash contributed by the participants to the Organization was in fact participation fees that were earmarked to be paid to the Promoter. It is our view that the cash was routed through Organization and MRYVS to the Promoters in 2008 in an attempt to conceal the true nature of the initial cash contribution by the participants.

It is our conclusion that the series of transactions outlined above was pre-arranged by the Promoter to disguise the participation fees paid by the participants as charitable

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<sup>7</sup> See Paragraphs 149.1(2)(b), 149.1(3)(b), and 149.1(3)(b) of the Act.

donations. We further concluded that the Organization helped facilitated this arrangement by acting in concert with MRYVS to unduly delay its obligation to meet its disbursement quota in 2008. Therefore, it appears that there is sufficient grounds to revoke the charitable status of the Organization under 149.1(4.1) of the Act.

**The Organization's Options:**

**a) No Response**

You may choose not to respond. In that case, the Director General of the Charities Directorate may give notice of its intention to revoke the registration of the Organization by issuing a Notice of Intention in the manner described in subsection 168(1) of the Act.

**b) Response**

Should you choose to respond, please provide your written representations and any additional information regarding the findings outlined above **within 30 days** from the date of this letter. After considering the representations submitted by the Organization, the Director General of the Charities Directorate will decide on the appropriate course of action.

If you appoint a third party to represent you in this matter, please send us a written authorization naming the individual and explicitly authorizing that individual to discuss your file with us. The most current representative we have on file is Edwin C Harris.

If you have any questions or require further information or clarification, please do not hesitate to contact the undersigned at the numbers indicated below.

Yours sincerely,

[Redacted Signature]

[Redacted Title]

Verification and Enforcement Auditor  
Nova Scotia Tax Service Office  
Canada Revenue Agency

Telephone: [Redacted]

Facsimile: [Redacted]

Address: 1557 Hollis Street  
PO Box 638  
Halifax, NS B3J 2T5

Appendix A Attached working papers  
W/P# 400-1, 500-1, 540B, 755, 765, 800

## Appendix A

### Overview of the Global Learning Gifting Initiative registered tax shelter gifting arrangement (Donation Program)

#### Parties Involved

1. Contributor
  - A Bahamian Corporation
2. Promoter
  - Global Learning Group Inc., a Canadian corporation.
3. Trust
  - Global Learning Trust (2004) (the Trust), a Canadian Trust, was settled on November 19, 2004 by a resident of Bahamas (the Settler).
  - The trustee of the Trust is Global Learning Trust Services Inc. (the Trustee), a Canadian corporation. The sole shareholder of the Trustee is a Canadian resident.
4. Vendor
  - The licensor of the Master License Agreement (the Vendor) is a corporation resident in Florida.
4. Escrow Agent
  - Escrow agent Inc. (the Escrow Agent), a Canadian corporation, is the escrow agent.
5. Consultant
  - The consultant (the Consultant) of the Donation Program is a Canadian corporation.
6. Service Provider
  - The service provider (the Service Provider), a Canadian corporation
7. Charities
  - The Malvern Rouge Valley Youth Services (MRVYS)
  - Glooscap Heritage Society (Organization)
8. Participants/Donors

#### Transactions in 2008

- Participants would participate in the Donation Program by making a cash payment to either the Organization or MRVYS. Participants would also make an application to become a capital beneficiary of the Trust.
- The Contributor granted the Trust various single user perpetual royalty free licenses to use the courseware.

## Appendix A

- Upon acceptance as a capital beneficiary, the participants would receive a capital distribution from the trustee of the Trust in the form of "educational courseware" which the participants would then donate to MRVYS in 2008.
- The participants would receive a donation receipt from the Organization for the amount of the cash payment and an additional donation receipt from MRVYS for the purported fair market amount of "educational courseware." The purported fair market value of the "educational courseware" recorded on the donation receipt from the MRVYS would generally be three to seven times the cash donation. The combined tax credit available from the two donation receipts would exceed the participant's cash outlay, and as noted in the promotional brochure, would result in a positive return to the participant of 56% to 112% depending on the participant's province of residence and the personal income tax rates in effect there.
- Prior to November of 2008, Glooscap was strictly receiving and receipting for cash donations while MRVYS was strictly receiving and receipting for the in-kind donations (i.e., the educational courseware).
- The contract between Glooscap and the Promoter required Glooscap to pay the Promoter 19.5% of the total cash payments raised through the Donation Program. The Canada Revenue Agency's (the CRA) audit revealed that Glooscap actually paid the Promoter 18.39% of the total cash payments received.
- Our audits have not revealed, nor been provided with, a contract between Glooscap and MRVYS; however, our audits have revealed that on a regular and frequent basis, Glooscap advanced 75.62% of the total cash payments received from participants through the Donation Program as "gifts" to MRVYS. Glooscap accordingly retained 5.99% of the total cash payments received.
- Finally, the contract between MRVYS and the Promoter requires MRVYS to pay the Promoter a fundraising fee equal to 16.62% of the total value of cash gifts received from Glooscap and the purported fair market value of the courseware. This amount was not to be more than 88% of the cash gifts MRVYS received through the Donation Program. Our audit has discovered that the MRVYS actually paid 86.5% of the total cash it received through the Donation Program to the Promoter, due to the high receipted value of the educational courseware. In the end, most of the cash contributed by the participants ended up in the hands of the Promoter.
- Glooscap tried to terminate its participation in November of 2008 and only received 3 deposits that versus the normal 7-10 deposits per month. Glooscap agreed to continue receiving the cash from participants and transferring the majority of that cash to MRVYS until December 31, 2008 (their fiscal period year end). It then received 9 more payments in December and no other payment until November 2009 when they signed a new agreement with the promoter. Hence from December of 2008 to April 30, 2009 (Malvern's fiscal year end), most of the participant's cash contributions to participate in the Donation Program went directly to MRVYS and MRVYS issued tax receipts. MRVYS revised its original contract with the Promoter using the terms from the original Glooscap/Promoter contract. The movement of the cash contributions from the participants to MRVYS and finally to the Promoter has not changed after the revision of the MRVYS agreement.

## Appendix A

### Transactions in 2009

- The new agreement with Glooscap in 2009 showed 89.5% was to go back to the promoter. After our review accounted for holdbacks and NSFs 88.36% actually went back to the promoter.
- The program worked almost identical to the one in 2008 except this time Glooscap received both the cash and the gift in kind of courseware.
- The Participants would participate in the Donation Program by making a cash payment to the Organization (Glooscap). The Participants would also make an application to become a capital beneficiary of the Trust.
- The Contributor granted the Trust various single user perpetual royalty free licenses to use the courseware.
- Upon acceptance as a capital beneficiary, the Participants would receive a capital distribution from the trustee of the Trust in the form of a Deed of Gift of Property of "educational courseware" which the Participants would then donate to Glooscap starting in November of 2009.
- The Participants would receive a donation receipt from the Organization for the amount of the cash payment and an additional donation receipt from the Organization for the purported fair market amount of "educational courseware." The purported fair market value of the "educational courseware" recorded on the donation receipt from the Organization would generally be three to seven times the cash donation. The combined tax credit available from the two donation receipts would exceed the participant's cash outlay, and as noted in the promotional brochure, would result in a positive return to the participant of 56% to 112% depending on the participant's province of residence and the personal income tax rates in effect there.

**GLOOSCAP HERITAGE SOCIETY**

**COMMENTS ON REPRESENTATIONS OF NOVEMBER 22, 2011**

Based on the Canada Revenue Agency's (CRA) audit of Glooscap Heritage Society (the Organization), the Organization primarily operates for the purpose of furthering a registered tax shelter, Global Learning Gifting Initiative (GLGI) by agreeing, for a fee, to act as a receipting agent for this tax shelter program. As described in the balance of this letter, and in our letter of October 27, 2011, the Organization is operating as a conduit for the tax shelter; is in serious breach of the requirements for registration under the *Income Tax Act* and its registration should be revoked.

**1A. Failure to devote all resources to charitable activities**

Our audit revealed that an overwhelming majority of the Organization's resources are devoted to and received from its participation in the GLGI tax shelter. The manner in which the Organization has structured itself to accommodate this tax shelter has become an end in itself. The Organization has attempted to alter its stated charitable objects to facilitate the distribution of the courseware received and devotes nearly 95% of its resources to its participation and promotion of this tax shelter. Operating for the purpose of promoting a tax shelter donation arrangement is not a charitable purpose at law.

Based on our findings that the Organization devotes substantially all of its resources towards the promotion and facilitation of the tax shelter program than it does to its own charitable programs, we find it difficult to conclude that the predominant purpose of the Organization is anything other than promoting of the GLGI tax shelter. Accordingly, per our previous letter, we remain of the position that the Organization ceased to meet the definition of a charitable organization as laid out in subsection 149.1(1) of the Act. During the audit period, the Organization operated primarily, or at least collaterally, for the purpose of promoting an abusive tax shelter arrangement and cannot be considered to be devoting all of its resources to charitable activities carried on by it.

Operating *Ultra Vires*

Once registered, a charity must only pursue activities in furtherance of its specific charitable purposes as approved by CRA. The implicit understanding is that the charity will not undertake any activity beyond those described in its application for charitable registration. This is necessary to ensure that the charity will operate within the limitations imposed by the Act. Per our previous letter, it is our position the Organization has broadened its charitable objects to include activities that would enable it to distribute the courseware received as a result of participating in the GLGI tax shelter and that the Organization has operated beyond its approved charitable mandate.

Your submission notes that "some early irregularities relating to the [Organization's] activities are admitted, but it is submitted that all those activities were conducted in good faith to further charitable purposes that were regarded as the true objectives of the [Organization]".

We disagree with your representations based on the following facts. Our confirmation of registration letter dated July 2005 informed the Organization of the need to contact the Charities Directorate if they are changing their registered objects or activities. Subsequently, in May and August 2008, CRA representatives repeatedly contacted the Organization and expressed our concerns regarding your tax shelter participation. Additionally, documents reviewed during our audit revealed that the Organization's lawyer informed you of the requirement to amend its charitable objectives in October 2008. Still, the Organization did not contact or inform the CRA about proposed changes to its charitable objectives nor did the Organization list its new programs on the annual information returns filed<sup>1</sup>. As such, it is our opinion the Organization's failure to notify the CRA of its changes to its stated objects was more than a mere oversight.

You further argue that "any alleged irregularity did not cause the [Organization] to cease to be a 'charitable organization' as defined in subsection 149.1(1) of the Act, or a 'registered charity' as defined in subsection 248(1) of the Act. As well, so acting does not form a basis upon which the [Organization's] revocation may be based under subsection 168(1) of the Act." Additionally, you state that "it is incorrect to state that the [Organization] "allocated the majority of its resources to activities that did not fall within its charitable mandate"" because "substantially all of the time and efforts of its personnel and of the use of its facilities were devoted to further its purposes".

Subsection 149.1(1) of the Act defines a "charitable organization" as an organization "...all the resources of which are devoted to charitable activities carried on by the organization itself". As was outlined in the above section, the majority of the Organization's resources were devoted to participating in and promotion of the GLGI tax shelter rather than the charitable activity of operating a museum. Resources are not limited to financial resources but also include personnel and facilities. Each type of resource must be considered when determining if a charitable organization has devoted all of its resources to its own charitable activities. As previously outlined, the Organization received and devoted nearly 95% of its financial resources to the promotion and participation of the registered tax shelter, amended its charitable objectives and underwent other internal changes<sup>2</sup> all in an effort to accommodate the tax shelter promoters and the courseware received. Therefore, it remains our position that the majority of the Organization's resources were allocated to the non charitable activity of supporting a tax shelter and given that substantially all of the funds received from the tax shelter participants were ultimately returned to the tax shelter promoter, we cannot accept your representations that the funds were intended to support your own charitable purposes.

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<sup>1</sup> A review of the Organization's recently filed information returns reveal that the Organization continued to omit its purportedly new activity of expanding the education and learning opportunities for people of Aboriginal cultures in Canada.

<sup>2</sup> The Organization established separate bank accounts and entered into a third party contract to manage the incoming cash contributions and outgoing wire payments; it entered into a \$300,000 contract with InfoSource to maintain an internet portal through which the courseware was to be distributed to the end users; it sent employees to Florida to be trained on administering the courseware distribution through the InfoSource portal; it actively recruited individuals to become registered users of the courseware; and it designated one room in a newly leased facility to be used as a computer centre and assigned employees to administer the computer room.

You also argued that the courseware was seen as an opportunity to further the Organization's educational objective. Our review of the courseware revealed that it was a collection of computer tutorials on commonly-used office software applications, work-place communication and managerial skills. The titles of the courseware suggest they are selected specifically for the career development or job training purposes of individuals who are currently employed or entering the workforce. While laudable as a charitable activity, it is not consistent with the Organization's own approved charitable purposes.

Your representation states that "fundraising falls within the scope of legitimate activities" and we agree to a certain extent. Fundraising is not a charitable activity; however, a registered charity can raise funds to support its charitable purposes, but:

- If the fundraising activity becomes the primary emphasis of the charity, then it is not operating for exclusively charitable purposes; and
- If a substantial portion of the charity's revenues is devoted to the fundraising activity, it is not considered to be devoting its resources to charitable activities.

A registered charity that engages in fundraising as a primary activity, or that devotes a substantial portion of its revenue to fundraising activities, is putting its registered status in jeopardy<sup>3</sup>. As we found in our audit of the Organization, you paid 18.39% of total cash contributions received in 2008 as fundraising fees and further transferred another 75.62% of the total cash contributions received to another participating charity for the sole purpose of funneling further funds to the tax shelter promoter. By the end of 2008, nearly 94% of the total cash contributions received were ultimately paid to the tax shelter promoter as fundraising fees and we find this amount to be excessive and as well as grounds for concluding that the Organization is not operating for exclusively charitable purposes.

#### Collateral Non-Charitable Activities

Your representations state that participating in the GLGI tax shelter does not constitute a collateral non-charitable activity and goes on to further state that it is incorrect to state that the Organization "is promoting and facilitating the [GLGI tax shelter] primarily, if not exclusively, to confer tax benefits on the participants...the [Organization's] sole objective is to obtain funds and courseware to further its programs."

Despite the fact that the initial draw to the tax shelter may have been the potential fundraising opportunities, one can not ignore the details surrounding this tax shelter and the tax benefits it would confer on its participants which the Organization was aware of before it entered into its first contract. The Organization worked with the tax shelter promoters to facilitate the advertised tax benefits to participants by allowing donations to flow through them so that official donation receipts could be issued. As a result, the participants received a rate of return on their actual out of pocket cash contributions ranging from 56% to 112% while the Organization only retained 5.9% and 11.6% in 2008 and 2009 respectfully of the total cash contributions received after paying the promoters.

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<sup>3</sup> *Innovative Gifting Inc. v. House of the Good Sheperd et al.*, [2010] ; *Ontario (Public Guardian and Trustee) v. AIDS Society for Children (Ontario)*, [2001]

It has consistently been the CRA's position that the promotion of a tax shelter or donation arrangement is not charitable at law. Our position has been published in several publications as a matter of courtesy to inform the public of our position. An excerpt from one such publication, *Registered Charity Newsletter No 29 – Winter 2008*, states the following:

*Registered charities and registered Canadian amateur athletic organizations participating in abusive or fraudulent arrangements will be subject to revocation and/or monetary penalties. Further, any person, promoter, tax professional, or other third party who is closely involved with the development of an abusive or fraudulent tax shelter arrangement may be liable to penalties regarding false or misleading information, or omission of or inappropriate use of the tax shelter identification number.*

While it is true that various forms of education are accepted as advancing education for charitable purposes, it is also true that simply providing an opportunity for people to educate themselves is not sufficient. Based on the type of courseware provided to the Organization and the manner to which the courseware was eventually made available to the public<sup>4</sup>, it is our opinion that this situation does not lend itself to the advancement of education.

Therefore, our position remains that the Organization was not seeking to further its own approved charitable objectives or pursuing any charitable purpose through its participation in the tax shelter. As well, the facts of the tax shelter arrangement clearly demonstrate the intent of the Organization to lend its support and tax receipting privileges to this non-charitable purpose. As such, through this promotion of the tax shelter, the Organization was an eager participant in collateral non-charitable activities.

#### Operating as a Conduit

Your representations argued that the Organization was not acting as a conduit but was issuing "receipts based on the amount of cash that it received and the evidence that it had on the value of the courseware that represented donations in kind." From the Organization's participation in the tax shelter, it is our position the Organization is primarily operating as a conduit for an identified tax shelter and is furthering the for-profit motives of the tax shelter and its promoters.

Our audit revealed that the Organization merely relied upon the information provided by the tax shelter promoter without question; did not seek its own independent opinion or verification of the program as presented to it before signing the first agreement; and accepted the promoter's valuations. The Organization did not attempt to get an independent appraisal until after it had already written donation receipts for nearly \$11.5 million in courseware. A legal opinion was only sought after CRA expressed its concerns about the Organization's participation in the program. However, the Organization entered into a second agreement with the tax shelter before the legal opinion was made available to its board and continued to

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<sup>4</sup> We note that the portal was not set up until after March 15, 2010; the first open house to draw in native people to use the courseware occurred on September 24, 2010 (which coincidentally was the first week our audit commenced) and only 21 users of the courseware were recorded up to December 2010.

participate despite receiving an unfavourable legal opinion<sup>5</sup> from its own counsel. Additionally, as outlined in our previous letter, the Organization was financially dependent on the tax shelter. Without the cash contributions retained, the Organization would have had significant operating deficits.

The actions of and information provided by the Organization lead us to believe the Organization is merely operating as a conduit for a tax shelter and has agreed to participate in exchange for financial compensation. While you state that "the availability of tax credits is an incentive for charitable giving, a charity's concern is what it can do with donated funds and assets", our findings have demonstrated otherwise. On behalf of the tax shelter, the Organization agrees to accept the donations of cash and courseware from participants and agrees to purportedly utilize 100% of the courseware as part of its own programs while paying the promoter a set fee. We fail to recognize how, in this case, the Organization concerned itself with what it could do with the entirety of the funds and courseware received.

It is our position that by pursuing this non-charitable purpose, the Organization has failed to demonstrate it meets the test for continued registration under 149.1(1) as a charitable organization that "operated exclusively for charitable purposes". Under paragraph 168(1)(b) of the Act, the Minister may, by registered mail, give notice to the organization that the Minister proposes to revoke its registration because it ceases to comply with the requirements of the Act related to its registration as such. For this reason alone there are grounds for revocation of the Organization's registered charity status under paragraph 168(1)(b) of the Act.

#### **1B. Gifts to Non Qualified Donees**

We accept your submission that the Organization's gift of \$25,000 to Jiksutui was not a gift made to a qualified donee. However, we do not concur with your representations that the gift was "immaterial" or "that the funds would be applied in a manner to further the [Organization's] objectives." The amount represents 13% of the Organization's charitable expenditures (exclusive of tax shelter related expenditures) and transactions of "good faith" are not enough to satisfy the requirement that a registered charity must demonstrate its resources were used exclusively to further its approved charitable objects and that it maintains full control over such resources. Your representations do not provide any further evidence to verify that the funds were used to further the Organization's approved charitable objects.

It is our position that by pursuing this non-charitable purpose, the Organization has failed to demonstrate it meets the test for continued registration under 149.1(1) as a charitable organization that "operated exclusively for charitable purposes". Under paragraph 168(1)(b) of the Act, the Minister may, by registered mail, give notice to the organization that

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<sup>5</sup> The e-mailed legal opinion regarding the 2009 GLGI proposal stated "the dollar value attributable to such courseware would vastly exceed the dollar value of monetary contributions"; "[t]he value attributable to the courseware materials received as gifts-in-kind might potentially be problematic for [the Organization]"; "CRA is reviewing all tax shelter related arrangements" and further stated that if the Organization used the [REDACTED] it might be viewed as a series of artificial transactions; and that potential risks of participating would include monetary sanctions and possible suspension or revocation of the Organization's charitable status.

the Minister proposes to revoke its registration because it ceases to comply with the requirements of the Act related to its registration as such. For this reason alone there are grounds for revocation of the Organization's registered charity status under paragraph 168(1)(b) of the Act.

## **2. Issuing Tax Receipts Not In Accordance with the Act**

Pursuant to subsection 118.1(2) of the Act, a registered charity can issue tax receipts for income tax purposes for donations that legally qualify as gifts. The Act requires registered charity to ensure the information on its official donation receipts is accurate. The requirements for the contents of the receipts are listed in Regulation 3501 of the Act. A registered charity could have its registered status revoked under paragraph 168(1)(d) of the Act for issuing tax receipts that contain false information.

It remains our position that the Organization has contravened the Act by accepting and issuing receipts for transactions that do not qualify as gifts. The Organization has issued tax receipts exceeding \$24.8 million received as a result of its participation in the GLGI tax shelter. We maintain that the property for which the tax receipts were issued were not gifts at law and the receipted values were grossly inflated.

### **Lack of Donative Intent**

Your submission argues that, "to the extent that 'donative intent' was relevant to the existence of a gift before the proposed amendments to section 248 of the Act came into effect, it was present in this case." You further argue that in *The Queen v. Friedberg*, 89 DTC 5115 and 92 DTC 6031 both courts held that a substantial economic advantage derived from the amount of a tax credit from a charitable donation did not nullify the existence of a gift. You further state that the courts definition of a gift did not refer to donative intent as a separate criterion for the existence of a gift.

As per above, it is our view that it is incumbent on a charity to determine whether a transaction qualifies as a gift at law before issuing a tax receipt. It is also our view that the tax credit available with respect to a donation is not usually an advantage or benefit that would affect whether a gift is made. We also note that, in rare and unusual circumstances, a taxpayer might be able to acquire valuable property at a bargain price and donate said property at its factual increased value and the transaction may still be validly viewed as a gift. However, it is our position that arrangements that are mass-promoted promising participants that they will be able to claim tax credits for charitable donations far in excess of their actual out of pocket expenditures actually lack the requisite *animus donandi* or donative intent for the transactions to be considered gifts.

The proposed amendments to section 248 are applicable to gifts made after December 5, 2003, well before our audit period. While subsection 248(30) has provided a level of leniency in questionable cases, it is not intended to allow a taxpayer to profit by making a gift to a registered charity or qualified donee. Paragraph 248(30)(b) specifically states the intention to make a gift is necessary. In addition, our opinion remains that there

was a lack of donative intent present and that donative intent is an element in determining if the donation should be receipted in accordance with the Act.

Earlier cases than the Friedberg case submitted for argument noted intent of the donor. In the case of *Her Majesty The Queen (Plaintiff) v. Dr. F. Bruce Burns (Defendant)*, 88 DTC 6101, Justice Pinard of the Federal Court, Trial Division, discussed the concept of "animus donandi":

"I would like to emphasize that one essential element of a gift is an intentional element that the Roman law identified as animus donandi or liberal intent... The donor must be aware that he will not receive any compensation other than pure moral benefit; he must be willing to grow poorer for the benefit of the donee without receiving any such compensation."

In a later case, Justice Bowie stated in *Dwight Webb (Appellant) v. Her Majesty the Queen (Respondent)*, 2004 UDT 148:

"... in order for an amount to be a gift to charity, the amount must be paid without benefit or consideration flowing back to the donor, either directly or indirectly, or in anticipation of that. The intent of the donor must, in other words, be entirely donative." [Emphasis added]

It is our finding, based on the transactions outlined below and in Appendix A of our previous letter, that the primary motivation of the participants in the GLGI tax shelter was not to enrich the participating charities and assist in their fundraising, but rather, through a series of transactions, to make a profit from the tax credits so obtained. The promoter's website emphasized the tax advantages of the tax shelter. A simulator on the website demonstrated how a participant from Ontario could generate a tax refund of \$31,415 by making a cash contribution of \$12,000. The simulator calculated a "rate of return" on the initial cash contribution and participants could determine their "cash advantage". The participants could input their intended cash contribution and the simulator would convert the cash contribution at a 1 to 5 ratio to calculate the purported gift in kind donation, i.e. the courseware distribution from the trust, the participant would receive then donate to a participating charity. We observed that cash advantages and rates of returns for various provinces were similarly highlighted in the promotional materials of previous years' versions of the tax shelter. The Organization was fully aware of this arrangement with the participants, as it possessed the promotional materials which outlined these calculations.

In a recent tax court case<sup>6</sup> Justice Archibald remarked on the subject of gifting tax shelters:

"The technique in all these tax shelters is the same: you write off more than the amount you have paid or are liable to pay. In this fashion, you make a profit with the tax benefit alone, so no one cares how the money is being spent."

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<sup>6</sup> *Patricia Norton v Her Majesty The Queen* 2008 TCC 91

It is our opinion that the transactions in the tax shelter in which the Organization participated lack the requisite *animus donandi* to be considered gifts. The CRA remains of the opinion that the transactions are not such that the participants give of themselves to enrich a charity, but through a series of transactions and a minimal monetary investment, to enrich themselves with comparatively insignificant amounts actually being devoted to charity.

Additionally, we agree that the charitable tax credit available with respect to a donation is "not usually an advantage or benefit that would affect whether a gift is made"<sup>7</sup>, as was noted in your representations. As demonstrated above and in our previous letter, the courts have agreed that an element of charitable intent or *animus donandi* must be present. Therefore our position remains that the donations made to the Organization with respect to this tax shelter have a lack of donative intent. As such, it is our position there is no intention to make a "gift" within the meaning assigned at section 118.1 of the Act and these transactions did not qualify for tax receipting purposes.

#### Benefit Received and Proposed Legislation

On December 5, 2003, the Department of Finance introduced new legislation with respect to charitable donations and advantages. These rules allow a taxpayer to make a gift to a charity and receive some advantage in return; however, the value recorded on the receipt must reflect the eligible amount of the gift made (i.e., the value of the gift made less any advantage received by the donor). This legislation is applicable in respect of gifts made after December 5, 2003.

We are of the opinion that the tax shelter participants received consideration for their cash contribution in the form of a benefit or an advantage as defined by proposed subsection 248(32) of the Act and this benefit or advantage was directly linked to and flowed from pre-arranged conditions. Your representations disagree that the courseware was not the benefit or advantage received simply because the participants "did not keep the courseware". We do not accept this interpretation of the proposed legislation or the tax shelter's facts. The fact that the participants "did not keep the courseware" does not mitigate the fact that the participants in the tax shelter received the property (courseware) as a result of their cash contribution and immediately signed a Deed of Gift transferring their ownership of the property to a participating charity. It was pre-determined that the participants would not keep the courseware; keeping the courseware would nullify any financial advantage or benefit received as a result of participating in the tax shelter.

Additionally, we did not artificially separate the participant's donation of courseware from the purported cash donations as alleged in your representations. The donation of the courseware was a separate step in the tax shelter program; as represented on the tax shelter promoter's website and in promotional brochures and presentations. Accordingly, the fair market value of the subsequent gift of that property, the courseware, to the Organization is deemed, by virtue of proposed subsection 248(32) of the Act, to be the advantage. Subsection 248(35) of the Act deems this gift to be no more than the amount of the cash contribution. Consequently the amount that the Organization was required under the Act to

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<sup>7</sup> *The Queen v. Friedberg*, 92 DTC 6031 (F.C.A.) at 6032

record on its official donation receipts as the courseware's deemed fair market value is significantly lower than what was actually recorded by the Organization.

We remain of the position that the representations made with respect to the tax shelter are simply not credible. The CRA is asked to believe that despite the courseware being worth millions of dollars, the Trust's settlers have charitably agreed to distribute the courseware to the capital beneficiaries without compensation or with minimal compensation. The CRA is then told the participants voluntarily choose to donate 100% of the courseware to the Organization or another participating charity or qualified donee and there is no link between their eligibility to receive the property and their cash contributions. This is despite the fact that participants have little to no knowledge or connection to the Organization<sup>8</sup>, that the Organization operated as a museum preserving the Mi'kmaq First Nation history in Nova Scotia prior to and throughout its tax shelter participation and that there is a clear and pre-advertised correlation between how much participants contribute out of pocket and how much they receive.

### Fair Market Value

It remains our position that the values reported on the tax receipts for the in-kind gifts of courseware did not represent their factual fair market value. While it is true there is "nothing in the Act [that] requires a charity to obtain an independent valuation of donations in kind", the Act does require donation receipts issued for property other than cash record "the fair market value of the property at the time the gift is made". Your representations have not provided further details on the independent valuations purportedly obtained. Therefore, it remains our position that the Organization relied on the valuations commissioned by the tax shelter promoter and that this valuation overstated the market value of the courseware. In 2009, the Organization issued tax receipts totalling \$11.5 million for courseware received through the tax shelter.<sup>9</sup>

Your representations argue that the "value recognized by the receipts issued by the [Organization] is supported by the demand that it is receiving for use of the courseware and by the evident satisfaction expressed by users" and "[t]he value of the courseware to the [Organization] is demonstrated by its successful and growing use." Our audit revealed very little demand or satisfaction by the users. Of the 305 registered users, only 21 users accessed the courseware<sup>10</sup>. We observed that only six different people spent more than one hour following any course and that the six users worked for the Organization. We fail to be convinced that 21 actual users justifies valuing the courseware at \$11.5 million in 2009. We also do not find support in law to support your assertion that demand and satisfaction dictate the value of an item. As such, our position remains that the value recorded on the official donation receipts issued for the courseware in 2009 remains overvalued and that the factual value is the last known arm's length price paid.

### Due Diligence

<sup>8</sup> The Organization mailed our donation pleas to the 2008 tax shelter participants and received no donations.

<sup>9</sup> In 2010, the Organization issued tax receipts in excess of \$31.2 million for courseware.

<sup>10</sup> The Organization claimed to have access to 10,000 packages of courseware with each package containing 171 individual licences.

Your representations have failed to provide any new information that would change our position regarding the Organization's due diligence. We note with concern that the Organization has demonstrated a lack of due diligence with respect to its tax-receipting practices. As previously explained, the CRA recommends the use of independent appraisers to determine the fair market value of gifts of property to be reported on the tax receipts. The Organization's willingness to issue almost \$11.5 million in tax receipts for courseware based solely on valuation reports provided by the tax shelter promoter, demonstrated that it had no regard for the receipting privileges granted to it under the Act. We believe the Organization's lack of due diligence reinforces our earlier assertion that your primary focus has become the facilitation of this tax shelter.

### Cash Payments

We remain of the opinion that the cash contributions received by the Organization were also not gifts. Our position remains that the cash contributions represent a charge levied by the tax shelter promoter to participants to participate in the tax shelter. Although the cash contributions were represented as being "gifted" to the Organization, it was clear that at no point was the cash fully available to be used by the Organization for its programs. Rather, the Organization was contractually obligated to funnel a majority of the cash to the tax shelter promoter either through direct payments or under the guise of gifts made to another participating charity, Malvern Rouge Youth Valley Services (MRYVS). We disagree with your representations that the amounts paid to GLGI were "within a reasonable range as a proportion of the value of the total gifts" and that "the amounts of cash retained by the [Organization] were not nominal". We agree that retaining nearly \$900,000 is not nominal; however, in comparison to the \$13.4 million originally raised by the Organization, the 6.7% retained is nominal. In 2008, the Organization paid GLGI 18.39% of total gifts received and further transferred 75.62% of total gifts received to MRYVS. MRYVS in turn paid fundraising fees to GLGI equivalent to 85% of the gifts received from the Organization. In 2009, upon re-signing its lucrative fundraising contract with GLGI, the Organization agreed to pay GLGI 89.5% of total cash contributions received.

Under paragraph 168(1)(d), the Minister may, by registered mail, give notice to the registered charity that the Minister proposes to revoke its registration if it issues a receipt otherwise than in accordance with the Act and its Regulations. Issuing a donation receipt where there is no gift, no donative intent or the information on the receipt is false is not in accordance with the Act. It is our position the Organization has issued receipts otherwise than in accordance with the Act and its Regulations. For each reason identified above, there are grounds for revocation of the Organization's registered charity status under paragraph 168(1)(d) of the Act.

### **3. Acting in Concert**

Per our previous letter, over 80% of the cash contributed in 2008 by the tax shelter participants, and tax-receipted by the Organization, ended up in the hands of the tax shelter promoter. The Organization paid 18.39% of the cash it received from the participants to the promoter as fundraising fees and transferred 75.62% to Malvern Rouge Youth Valley

Services. The contract between MRYVS and the promoter ensured over 85% of the cash MRYVS received from the Organization would be paid to the promoter as fundraising fees. Therefore, the Organization by purportedly gifting to MRYVS was able to route the majority of the tax-receipted cash to the promoter while ostensibly meeting its annual disbursement quota. It is our position the cash was routed through the Organization and MRYVS to the promoters in 2008 in an attempt to conceal the true nature of the initial cash contributions made by the participants and was not a gift made to a qualified donee.

You argue that the Organization, "was not party to any contract between MRYVS and the promoter" and it was not acting in concert with MRYVS to circumvent the Organization's disbursement quota. We disagree with your arguments considering that the Organization never donated to MRYVS before or after its participation in the tax shelter and that the Organization received invoices from the promoters instructing them as to how much to pay MRYVS. Furthermore, we observed that when the Organization ceased making payments to MRYVS in late 2008, the tax shelter related donations also ceased until the Organization agreed to continue making payments to MRYVS upon their lawyer's advice. After which, the donations from the tax shelter resumed to their normal level.

Thus, it remains our position that the series of transactions outlined above was pre-arranged by the promoter to disguise the participation fees paid by the participants as charitable donations. We further concluded that the Organization helped facilitated this arrangement by acting in concert with MRYVS to unduly delay its obligation to meet its disbursement quota in 2008. Therefore, there are sufficient grounds to revoke the charitable status of the Organization under subsection 149.1(4.1) of the Act.

#### **4. Other Areas of Non-Compliance**

Our position remains unchanged regarding the inaccuracies reported on the T3010 *Registered Charity Information Returns* filed, late filed information returns, failure to meet the annual disbursement quota and the failure to file T4/T4A *Statements of Remuneration Paid*. Your representations do not alter our positions and we offer the further rebuttals.

Although an accountant can assist in the preparation of an information return, it is the Organization's responsibility to review it and ensure its accuracy. The inaccuracies identified in our previous letter have not been corrected<sup>11</sup>. While your representations consider the inaccuracies to be immaterial and not misleading, we respectfully disagree. The Organization understated its 2009 tax-receipted donations by \$1,842,457 and the amount paid to the tax shelter by \$1,749,536. We consider these amounts material.

Per our previous letter and discussed below, we do not concur that the Organization's transfer of funds to MRYVS was a gift made to a qualified donee. Per our understanding of the tax shelter and observing the flow of cash between the two participating charities and the tax shelter promoter, it is clear there was a pre-established understanding that the majority of

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<sup>11</sup> We also note that the Organization's 2010 information return fails to contain the amount paid to the tax shelter promoter on line 5020 and lines 5900 and 5910, used to calculate a charity's disbursement quota, are incomplete. The Organization has not submitted any revised T3010 information returns to correct the errors and omissions identified during our audit.

the cash contributions raised would ultimately be received by the tax shelter promoter as fundraising fees. Furthermore, routing these funds through another participating charity does not by the very nature of the transfer, deem these amounts to be gifts made to a qualified donee. As such, we remain of the position the Organization has a disbursement quota shortfall of \$8,509,219.

Regarding the bonus payments made to the principals of the Organization for their involvement with the tax shelter, it remains our position the Organization failed to prepare and file T4/T4A *Statement of Remuneration Paid*. We disagree with your representations that the bonuses were paid to independent contractors. We observed no contract agreements between the Organization and the two individuals; however, we did observe board minutes documenting the Organization's proposal and acceptance of the individual's bonuses of \$7500/year for their involvement in the donation program.

Under paragraphs 149.1(2)(b) and 168(1)(c) of the Act, the Minister may, by registered mail, may give notice to the charity that the Minister proposes to revoke its registration because the charity fails to meet its annual disbursement quota obligation and it fails to file a *Registered Charity Information Return* as and when required under the Act or a Regulation. For this reason, there are grounds for revocation of the charitable status of the Organization under paragraphs 149.1(2)(b) and 169(1)(c) of the Act.

#### **Appropriateness of Revocation:**

Finally, we note that your letter concludes, "that such irregularities as have occurred were inadvertent and not material and will not be repeated. The [Organization] has given notice terminating its relationship with GLGI". We disagree with each of these submissions. First, the Organization has failed to demonstrate that it operates exclusively for charitable purposes, has improperly issued receipts for over \$24.8 million in transactions that do not qualify as gifts under the Act or common law and has breached numerous other requirements of the Act. It is the CRA's position that these are serious contraventions of the Act and that the "irregularities" were not inadvertent or immaterial hence warranting the revocation of the Organization's registered status. Secondly, we note the Organization has previously stated it terminated its relationship with GLGI in 2008 yet has continued its participation and promotion of this tax shelter in 2009 and 2010. The Organization has not submitted any documentation as evidence supporting the alleged termination of its lucrative contract with GLGI and based on past actions, the CRA cannot accept your representations that the serious non-compliances identified will not be repeated. For all the reasons explained in our October 27, 2011 letter, and for each of these reasons alone, it is the position of the CRA that the Organization's registration should be revoked.

**Section 149.1: [Charities]**

**149.1(2) Revocation of registration of charitable organization**

The Minister may, in the manner described in section 168, revoke the registration of a charitable organization for any reason described in subsection 168(1) or where the organization

- (a) carries on a business that is not a related business of that charity; or
- (b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the organization's disbursement quota for that year.

**149.1(3) Revocation of registration of public foundation**

The Minister may, in the manner described in section 168, revoke the registration of a public foundation for any reason described in subsection 168(1) or where the foundation

- (a) carries on a business that is not a related business of that charity;
- (b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;
- (c) since June 1, 1950, acquired control of any corporation;
- (d) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities; or
- (e) at any time within the 24 month period preceding the day on which notice is given to the foundation by the minister pursuant to subsection 168(1) and at a time when the foundation was a private foundation, took any action or failed to expend amounts such that the Minister was entitled, pursuant to subsection (4), to revoke its registration as a private foundation.

**149.1(4) Revocation of registration of private foundation**

The Minister may, in the manner described in section 168, revoke the registration of a private foundation for any reason described in subsection 168(1) or where the foundation

- (a) carries on any business;
- (b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;
- (c) since June 1, 1950, acquired control of any corporation; or
- (d) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities.

#### **149.1(4.1) Revocation of registration of registered charity**

The Minister may, in the manner described in section 168, revoke the registration

- (a) of a registered charity, if the registered charity has made a gift to another registered charity and it can reasonably be considered that one of the main purposes of making the gift was to unduly delay the expenditure of amounts on charitable activities;
- (b) of the other charity referred to in paragraph (a), if it can reasonably be considered that, by accepting the gift, it acted in concert with the registered charity to which paragraph (a) applies; and
- (c) of a registered charity, if a false statement, within the meaning assigned by subsection 163.2(1), was made in circumstances amounting to culpable conduct, within the meaning assigned by that subsection, in the furnishing of information for the purpose of obtaining registration of the charity.

#### **Section 168: Notice of intention to revoke registration**

168(1) Where a registered charity or a registered Canadian amateur athletic association

- (a) applies to the Minister in writing for revocation of its registration,
  - (b) ceases to comply with the requirements of this Act for its registration as such,
  - (c) fails to file an information return as and when required under this Act or a regulation,
  - (d) issues a receipt for a gift or donation otherwise than in accordance with this Act and the regulations or that contains false information,
  - (e) fails to comply with or contravenes any of sections 230 to 231.5, or
  - (f) in the case of a registered Canadian amateur athletic association, accepts a gift or donation the granting of which was expressly or impliedly conditional on the association making a gift or donation to another person, club, society or association,
- the Minister may, by registered mail, give notice to the registered charity or registered Canadian amateur athletic association that the Minister proposes to revoke its registration.

#### **168(2) Revocation of Registration**

Where the Minister gives notice under subsection (1) to a registered charity or to a registered Canadian amateur athletic association,

- (a) if the charity or association has applied to the Minister in writing for the revocation of its registration, the Minister shall, forthwith after the mailing of the notice, publish a copy of the notice in the *Canada Gazette*, and
- (b) in any other case, the Minister may, after the expiration of 30 days from the day of mailing of the notice, or after the expiration of such extended period from the day of mailing of the notice as the Federal Court of Appeal or a judge of that Court, on application made at any time before the determination of any appeal pursuant to subsection 172(3) from the giving of the notice, may fix or allow, publish a copy of the notice in the *Canada Gazette*;

and on that publication of a copy of the notice, the registration of the charity or association is revoked.

#### **168(4) Objection to proposal or designation**

A person that is or was registered as a registered charity or is an applicant for registration as a registered charity that objects to a notice under subsection (1) or any of subsections 149.1(2) to (4.1), (6.3), (22) and (23) may, on or before the day that is 90 days after the day on which the notice was mailed, serve on the Minister a written notice of objection in the manner authorized by the Minister, setting out the reasons for the objection and all the relevant facts, and the provisions of subsections 165(1), (1.1) and (3) to (7) and sections 166, 166.1 and 166.2 apply, with any modifications that the circumstances require, as if the notice were a notice of assessment made under section 152.

#### **Section 172: Appeal from refusal to register, revocation of registration, etc.**

##### **172(3) Appeal from refusal to register, revocation of registration, etc.**

Where the Minister

- (a) refuses to register an applicant for registration as a Canadian amateur athletic association,
- (a.1) confirms a proposal, decision or designation in respect of which a notice was issued by the Minister to a person that is or was registered as a registered charity, or is an applicant for registration as a registered charity, under any of subsections 149.1(2) to (4.1), (6.3), (22) and (23) and 168(1), or does not confirm or vacate that proposal, decision or designation within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal, decision or designation,
- (b) refuses to accept for registration for the purposes of this Act any retirement savings plan,
- (c) refuses to accept for registration for the purposes of this Act any profit sharing plan or revokes the registration of such a plan,
- (d) refuses to issue a certificate of exemption under subsection 212(14),
- (e) refuses to accept for registration for the purposes of this Act an education savings plan,
- (e.1) sends notice under subsection 146.1(12.1) to a promoter that the Minister proposes to revoke the registration of an education savings plan,
- (f) refuses to register for the purposes of this Act any pension plan or gives notice under subsection 147.1(11) to the administrator of a registered pension plan that the Minister proposes to revoke its registration,
- (f.1) refuses to accept an amendment to a registered pension plan, or
- (g) refuses to accept for registration for the purposes of this Act any retirement income fund, the applicant or the organization, foundation, association or registered charity, as the case may be, in a case described in paragraph (a) or (a.1), the applicant in a case described in paragraph (b), (d), (e) or (g), a trustee under the plan or an employer of employees who are beneficiaries under the plan, in a case described in paragraph (c), the promoter in a case described in paragraph (e.1), or the administrator of the plan or an employer who participates in the plan, in a case described in paragraph (f) or (f.1), may appeal from the Minister's decision, or from the giving of the notice by the Minister, to the Federal Court of Appeal.

## **Section 180: Appeals to Federal Court of Appeal**

### **180(1) Appeals to Federal Court of Appeal**

An appeal to the Federal Court of Appeal pursuant to subsection 172(3) may be instituted by filing a notice of appeal in the Court within 30 days from

- (a) the day on which the Minister notifies a person under subsection 165(3) of the Minister's action in respect of a notice of objection filed under subsection 168(4),
- (b) the mailing of notice to a registered Canadian amateur athletic association under subsection 168(1),
- (c) the mailing of notice to the administrator of the registered pension plan under subsection 147.1(11),
- (c.1) the sending of a notice to a promoter of a registered education savings plan under subsection 146.1(12.1), or
- (c) the time the decision of the Minister to refuse the application for acceptance of the amendment to the registered pension plan was mailed, or otherwise communicated in writing, by the Minister to any person,

as the case may be, or within such further time as the Court of Appeal or a judge thereof may, either before or after the expiration of those 30 days, fix or allow.

## **Section 188: Revocation tax**

### **188(1) Deemed year-end on notice of revocation**

If on a particular day the Minister issues a notice of intention to revoke the registration of a taxpayer as a registered charity under any of subsections 149.1(2) to (4.1) and 168(1) or it is determined, under subsection 7(1) of the Charities Registration (Security Information) Act, that a certificate served in respect of the charity under subsection 5(1) of that Act is reasonable on the basis of information and evidence available,

- (a) the taxation year of the charity that would otherwise have included that day is deemed to end at the end of that day;
- (b) a new taxation year of the charity is deemed to begin immediately after that day; and
- (c) for the purpose of determining the charity's fiscal period after that day, the charity is deemed not to have established a fiscal period before that day.

### **188(1.1) Revocation tax**

A charity referred to in subsection (1) is liable to a tax, for its taxation year that is deemed to have ended, equal to the amount determined by the formula

$$A - B$$

where

A is the total of all amounts, each of which is

- (a) the fair market value of a property of the charity at the end of that taxation year,
- (b) the amount of an appropriation (within the meaning assigned by subsection (2) in respect of a property transferred to another person in the 120-day period that ended at the end of that taxation year, or
- (d) the income of the charity for its winding-up period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 as if that period were a taxation year; and

B is the total of all amounts (other than the amount of an expenditure in respect of which a deduction has been made in computing income for the winding-up period under paragraph (c) of the description of A, each of which is

- (a) a debt of the charity that is outstanding at the end of that taxation year,
- (b) an expenditure made by the charity during the winding-up period on charitable activities carried on by it, or
- (c) an amount in respect of a property transferred by the charity during the winding-up period and not later than the latter of one year from the end of the taxation year and the day, if any, referred to in paragraph (1.2)(c) to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the consideration given by the person for the transfer.

### **188(1.2) Winding-up period**

In this Part, the winding-up period of a charity is the period, that begins immediately after the day on which the Minister issues a notice of intention to revoke the registration of a taxpayer as a registered charity under any of subsections 149.1(2) to (4.1) and 168(1) (or, if earlier, immediately after the day on which it is determined, under subsection 7(1) of the Charities Registration (Security Information) Act, that a certificate served in respect of the charity under subsection 5(1) of that Act is reasonable on the basis of information and evidence available), and that ends on the day that is the latest of

- (a) the day, if any, on which the charity files a return under subsection 189(6.1) for the taxation year deemed by subsection (1) to have ended, but not later than the day on which the charity is required to file that return,
- (b) the day on which the Minister last issues a notice of assessment of tax payable under subsection (1.1) for that taxation year by the charity, and
- (c) if the charity has filed a notice of objection or appeal in respect of that assessment, the day on which the Minister may take a collection action under section 225.1 in respect of that tax payable.

### **188(1.3) Eligible donee**

In this Part, an eligible donee in respect of a particular charity is a registered charity:

- (a) of which more than 50% of the members of the board of directors or trustees of the registered charity deal at arm's length with each member of the board of directors or trustees of the particular charity;
- (b) that is not the subject of a suspension under subsection 188.2(1);
- (c) that has no unpaid liabilities under this Act or under the Excise Tax Act;
- (d) that has filed all information returns required by subsection 149.1(14); and
- (e) that is not the subject of a certificate under subsection 5(1) of the Charities Registration (Security Information) Act or, if it is the subject of such a certificate, the certificate has been determined under subsection 7(1) of that Act not to be reasonable.

**188(2) Shared liability — revocation tax**

A person who, after the time that is 120 days before the end of the taxation year of a charity that is deemed by subsection (1) to have ended, receives property from the charity, is jointly and severally, or solidarily, liable with the charity for the tax payable under subsection (1.1) by the charity for that taxation year for an amount not exceeding the total of all appropriations, each of which is the amount by which the fair market value of such a property at the time it was so received by the person exceeds the consideration given by the person in respect of the property.

**188(2.1) Non-application of revocation tax**

Subsections (1) and (1.1) do not apply to a charity in respect of a notice of intention to revoke given under any of subsections 149.1(2) to (4.1) and 168(1) if the Minister abandons the intention and so notifies the charity or if

- (a) within the one-year period that begins immediately after the taxation year of the charity otherwise deemed by subsection (1) to have ended, the Minister has registered the charity as a charitable organization, private foundation or public foundation; and
- (b) the charity has, before the time that the Minister has so registered the charity,
  - (i) paid all amounts, each of which is an amount for which the charity is liable under this Act (other than subsection (1.1)) or the Excise Tax Act in respect of taxes, penalties and interest, and
  - (ii) filed all information returns required by or under this Act to be filed on or before that time.

**188(3) Transfer of property tax**

Where, as a result of a transaction or series of transactions, property owned by a registered charity that is a charitable foundation and having a net value greater than 50% of the net asset amount of the charitable foundation immediately before the transaction or series of transactions, as the case may be, is transferred before the end of a taxation year, directly or indirectly, to one or more charitable organizations and it may reasonably be considered that the main purpose of the transfer is to effect a reduction in the disbursement quota of the foundation, the foundation shall pay a tax under this Part for the year equal to the amount by which 25% of the net value of that property determined as of the day of its transfer exceeds the total of all amounts each of which is its tax payable under this subsection for a preceding taxation year in respect of the transaction or series of transactions.

**188(3.1) Non-application of subsection (3)**

Subsection (3) does not apply to a transfer that is a gift to which subsection 188.1(11) applies.

#### **188(4) Idem**

Where property has been transferred to a charitable organization in circumstances described in subsection (3) and it may reasonably be considered that the organization acted in concert with a charitable foundation for the purpose of reducing the disbursement quota of the foundation, the organization is jointly and severally liable with the foundation for the tax imposed on the foundation by that subsection in an amount not exceeding the net value of the property.

#### **188(5) Definitions**

In this section,

"net asset amount"

"net asset amount" of a charitable foundation at any time means the amount determined by the formula

$A - B$

where

A is the fair market value at that time of all the property owned by the foundation at that time, and

B is the total of all amounts each of which is the amount of a debt owing by or any other obligation of the foundation at that time;

"net value"

"net value" of property owned by a charitable foundation, as of the day of its transfer, means the amount determined by the formula

$A - B$

where

A is the fair market value of the property on that day, and

B is the amount of any consideration given to the foundation for the transfer.

#### **Section 189**

##### **189(6) Taxpayer to file return and pay tax**

Every taxpayer who is liable to pay tax under this Part (except a charity that is liable to pay tax under section 188(1)) for a taxation year shall, on or before the day on or before which the taxpayer is, or would be if tax were payable by the taxpayer under Part I for the year, required to file a return of income or an information return under Part I for the year,

(a) file with the Minister a return for the year in prescribed form and containing prescribed information, without notice or demand therefor;

(b) estimate in the return the amount of tax payable by the taxpayer under this Part for the year; and

(c) pay to the Receiver General the amount of tax payable by the taxpayer under this Part for the year.

**189(6.1) Revoked charity to file returns**

Every taxpayer who is liable to pay tax under subsection 188(1.1) for a taxation year shall, on or before the day that is one year from the end of the taxation year, and without notice or demand,

- (a) file with the Minister
  - (i) a return for the taxation year, in prescribed form and containing prescribed information, and
  - (ii) both an information return and a public information return for the taxation year, each in the form prescribed for the purpose of subsection 149.1(14); and
- (b) estimate in the return referred to in subparagraph (a)(i) the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year; and
- (c) pay to the Receiver General the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year.

**189 (6.2) Reduction of revocation tax liability**

If the Minister has, during the one-year period beginning immediately after the end of a taxation year of a person, assessed the person in respect of the person's liability for tax under subsection 188(1.1) for that taxation year, has not after that period reassessed the tax liability of the person, and that liability exceeds \$1,000, that liability is, at any particular time, reduced by the total of

- (a) the amount, if any, by which
  - (i) the total of all amounts, each of which is an expenditure made by the charity, on charitable activities carried on by it, before the particular time and during the period (referred to in this subsection as the "post-assessment period") that begins immediately after a notice of the latest such assessment was mailed and ends at the end of the one-year period exceeds
  - (ii) the income of the charity for the post-assessment period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 if that period were a taxation year, and
- (b) all amounts, each of which is an amount, in respect of a property transferred by the charity before the particular time and during the post-assessment period to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the consideration given by the person for the transfer.

**189(6.3) Reduction of liability for penalties**

If the Minister has assessed a registered charity in respect of the charity's liability for penalties under section 188.1 for a taxation year, and that liability exceeds \$1,000, that liability is, at any particular time, reduced by the total of all amounts, each of which is an amount, in respect of a property transferred by the charity after the day on which the Minister first assessed that liability and before the particular time to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the total of

- (a) the consideration given by the person for the transfer, and
- (b) the part of the amount in respect of the transfer that has resulted in a reduction of an amount otherwise payable under subsection 188(1.1).

**189 (7) Minister may assess**

Without limiting the authority of the Minister to revoke the registration of a registered charity, the Minister may also at any time assess a taxpayer in respect of any amount that a taxpayer is liable to pay under this Part.